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frontier Communications

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Senior Analyst
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February 28, 2012

Ms. Jocelyn Boyd
Chief Clerk and Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

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SC PUBLIC SERVICE COMMISSION

Re: Docket No. 2012-54-C
Frontier Access Service Tariff – NCUC No. 1 ("FAS Tariff")
Frontier Facilities for Intrastate Access Tariff ("FFIA Tariff")

Dear Ms. Boyd:

This letter responds to the letter of Verizon Communications filed on February 24, 2012. Attached is a Reply to Oppositions to Petition for Reconsideration and/or Clarification filed with the Federal Communications Commission ("FCC") on February 21, 2012 by Frontier Communications, Corporation ("Frontier") and Windstream Communications, Inc. ("Windstream").

The Frontier and Windstream Petition asks the FCC to clarify that the *Order* was not intended to displace intrastate originating access rates for PTSN-originated calls that are terminated over VoIP facilities. The Petition demonstrates that the Order had intentionally left in place intrastate and interstate originating access rates, subject only to a cap, until the FCC could develop the factual record that it conceded was missing at present, and then adopt a "measured transition" for these charges in a new rulemaking. The *Order's* rules for VoIP-PTSN traffic are part of, and should be, interpreted consistently with, the Overall ICC transition plan.

Frontier urges the South Carolina Public Service Commission and the Office of Regulatory Staff to reject Verizon's request until the FCC issues a clarifying order in the matter.

Sincerely,

Afton Ellison

Afton Ellison
Analyst, Government and Regulatory Affairs

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION AND/OR CLARIFICATION

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February 21, 2012

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Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION AND/OR CLARIFICATION

Pursuant to the Public Notice released on February 3, 2012,[1] Windstream Communications, Inc. ("Windstream") and Frontier Communications Corporation ("Frontier") respectfully submit this reply to oppositions to their petition (the "Petition") seeking reconsideration and clarification of the Commission's comprehensive reform *Order*.[2]

I. THE COMMISSION SHOULD CLARIFY THAT ORIGINATING ACCESS RATES REMAIN IN EFFECT FOR *ALL* PSTN-ORIGINATING CALLS—REGARDLESS OF HOW THEY TERMINATE—UNTIL THE COMMISSION ADOPTS A TRANSITION PLAN FOR THESE CHARGES.

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[1] Public Notice, Comment Cycle Established for Oppositions and Replies to Petitions for Reconsideration of the *USF/ICC Transformation Order*, DA 12-130 (rel. Feb. 3, 2012).

[2] *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 11-161, ¶ 164 (rel. Nov. 18, 2011) ("*Order*").

The Frontier and Windstream Petition asks the Commission to clarify that the *Order* was not intended to displace intrastate originating access rates for PSTN-originated calls that are terminated over VoIP facilities. The Petition demonstrates that the *Order* had intentionally left in place intrastate and interstate originating access rates, subject only to a cap, until the Commission could develop the factual record that it conceded was missing at present, and then adopt a "measured transition" for these charges in a new rulemaking.[3] The Petition also shows that flash-cutting PSTN-to-VoIP originating access rates to interstate levels would upset the careful balance proposed in the ABC Plan and explicitly adopted by the Commission,[4] opening a dangerous new avenue for arbitrage,[5] and requiring an expansion of the recovery mechanism to compensate carriers for the significant additional revenue losses they would immediately suffer.[6]

Multiple commenters agree with the Petition. For example, Cbeyond, Earthlink, Integra, and tw telecom concur that the Commission should clarify that it did not intend to flash-cut originating access rates for PSTN-to-VoIP calls, and they provide additional explanation for how such a flash cut would lead to significant amounts of arbitrage.[7] NECA, OPASTCO, and the Western Telecommunications Alliance request a similar clarification in their petition.[8] Even AT&T, which disagrees with the Petition, agrees that the access recovery mechanism would need to be expanded if PSTN-to-VoIP originating access rates are flash-cut to interstate levels.[9]

Commenters opposing the Petition misread the *Order* and misconstrue the reasoning behind it. Rather than read the *Order* as a consistent whole, they view the PSTN-VoIP section in isolation and attempt to create a contradiction between that section and the Commission's

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3 Petition at 21-23 (quoting *Order* at ¶ 818).
4 *Id.* at 23, 25-26.
5 *Id.* at 27-28.
6 *Id.* at 28-29.
7 Comments of Cbeyond, Earthlink, Integra, and tw telecom at 3-4.
8 Petition for Reconsideration and Clarification of NECA, OPASTCO, and the Western Telecommunications Alliance at 34-35.
9 Comments of AT&T at 39.

decision to reduce only terminating access rates at this time. They ignore the Commission's primary reason for maintaining (but capping) intrastate originating access rates for PSTN-originating calls: the absence of a factual record that could justify transitioning originating rates to bill-and-keep. They fail to acknowledge the origin of the VoIP-PSTN rules in the ABC Plan. And they make dramatic claims of regulatory snarls that turn out to be nothing more than their own refusals to follow the *Order*—such as the "VoIP-PSTN originating access charge disputes" that Verizon claims "are already popping up all over the country,"[10] which actually are disputes that *Verizon itself* is creating by "fil[ing] tariff objection letters in more than half of the states" so far, with promises to do this in "every state."[11]

A. The *Order's* Rules for VoIP-PSTN Traffic Are Part of, and Should Be Interpreted Consistently with, the Overall ICC Transition Plan.

The fundamental error of Verizon and similar commenters is to read the PSTN-VoIP section of the *Order* as if the rest of the *Order* does not exist. Though the Commission expressed its belief that a bill-and-keep framework should "ultimately" govern originating access,[12] the Commission explicitly stated that it was "limiting reform to terminating access charges at this time."[13] Indeed, the Commission expressly conceded that *it legally could not act to reduce originating access rates at this time*, given the essential need for a "measured transition" to bill-and-keep,[14] the absence of the factual record that would be needed to justify the appropriate transition, and the lack of an articulated legal rationale for reducing originating access rates. As the Commission conceded, "the comments do not provide a sufficient basis for

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10 Opposition of Verizon at 10.

11 *Id.* at 10.

12 *Order* at ¶ 817.

13 *Id.* at ¶ 739.

14 *Id.* at ¶ 818. The Commission repeatedly noted the need for a "measured transition" in the specific context of PSTN-VoIP traffic. *See, e.g., id.* ¶ 935 ("we are mindful of the need for a measured transition for carriers that receive substantial revenues from intercarrier compensation"); ¶ 946 (goal of VoIP-PSTN rule is "a measured transition to the new intercarrier compensation framework").

us to proceed at this time"; it was therefore obligated to "seek further comment as to what, if any, recovery would be appropriate for originating access charges and how such recovery should be implemented," as well as "comment on the legal basis for the Commission to provide or deny recovery for originating access."[15]

The Commission's decision to preserve and cap originating access rates pending the development of a record and the adoption of a future transition plan is not some isolated or incidental holding. It is a cornerstone of the Commission's carefully considered transition and is reaffirmed numerous times throughout the *Order*:

> 653. [I]n the Further Notice of Proposed Rulemaking (FNPRM), we seek comment on the transition and recovery mechanism for ***rate elements not reduced as part of this Order, including originating access*** . . . .
>
> * * *
>
> 739. . . . We believe that initially focusing the bill-and-keep transition on terminating access rates will allow a more manageable process and will focus reform where some of the most pressing problems, such as access charge arbitrage, currently arise. Additionally, we believe that ***limiting reform to terminating access charges at this time*** minimizes the burden intercarrier compensation reform will place on consumers and will help manage the size of the access replacement mechanism adopted herein. ***We recognize, however, that we need to further evaluate the timing, transition, and possible need for a recovery mechanism for those rate elements — including originating access . . . — that are not immediately transitioned***; we address those elements in the FNPRM.
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> * * *
>
> 764. In this Order, we explicitly supersede the traditional access charge regime and, subject to the transition mechanism we outline below, regulate terminating access traffic in accordance with the section 251(b)(5) framework. . . . ***[T]he transition process detailed below is limited to terminating switched access traffic and certain transport traffic.*** . . . [W]e seek comment on the transition and recovery for originating access and transport in the accompanying FNPRM.
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> * * *
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> 777. *Originating Access.* . . . ***Although we conclude that the originating access regime should be reformed, at this time we establish a transition to bill-and-keep only with respect to terminating access charge rates.*** The concerns we have with respect to network inefficiencies, arbitrage, and costly litigation are less pressing with respect to originating access . . . .

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15 *Id.* at ¶ 1301.

778. . . . [S]ection 251(g) continues to preserve originating access until the Commission adopts rules to transition away from that system. At this time, ***we adopt transition rules only with respect to terminating access*** and seek comment in the FNPRM on the ultimate transition away from such charges as part of the transition of all access charge rates to bill-and-keep.

* * *

800. . . . In brief, our transition plan first focuses on the transition for terminating traffic, which is where the most acute intercarrier compensation problems, such as arbitrage, currently arise. We believe ***that limiting reductions at this time to terminating access rates*** will help address the majority of arbitrage and manage the size of the access replacement mechanism. ***We also take measures today to start reforming other elements . . . including originating access . . . . Even so, we do not specify the transition to reduce these rates further at this time.*** Instead, we seek comment regarding the transition and recovery for such other rate elements in the FNPRM.

* * *

818. . . . ***Although we do not establish the transition for rate reductions to bill-and-keep in this Order, we seek comment in the FNPRM on the appropriate transition and recovery mechanism for ultimately phasing down originating access charges.***

* * *

922. [ICC data filings] are also needed . . . to enable the Commission to resolve the issues teed up in the FNPRM regarding the appropriate transition to bill-and-keep and, if necessary, the appropriate recovery mechanism for ***rate elements not reduced in this Order, including originating access*** . . . .

* * *

928. . . . ***[I]ncumbent LECs will continue to collect intercarrier compensation for originating access and dedicated transport, providing continued revenue flows—including the underlying implicit subsidies—from those sources during the transition outlined in this Order***, although we have determined that such rates ultimately will reach bill-and-keep as well.

* * *

1296. . . . [W]e seek comment on additional topics that will guide the next steps to comprehensive reform of the intercarrier compensation system initiated in the Order. First, we seek comment on the transition to bill-and-keep for ***rate elements that are not specifically addressed in the Order, including origination*** . . .

1297. . . . ***Although we specify the implementation of the transition for certain terminating access rates in the Order, we did not do the same for other rate elements, including originating switched access*** . . . . In this section, we seek further comment to complete our reform effort, and establish the proper transition and recovery mechanism for the remaining elements.

> 1298. *Origination.* ***Other than capping interstate originating access rates and bringing dedicated switched access transport to interstate levels, the Order does not fully address the complete transition for originating access charges.*** Instead, it provides on an interim basis that interstate originating switched access rates for all carriers are to be capped at current levels as of the effective date of the rules adopted pursuant to this Order. . . . Below, we seek comment on that final transition for *all* originating access charges.
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> * * *
>
> 1301. ***Although parties commented on the August 3 Public Notice's questions regarding possible recovery for originating access, the comments do not provide a sufficient basis for us to proceed at this time.*** Thus, we seek further comment as to what, if any, recovery would be appropriate for originating access charges and how such recovery should be implemented. . . . In addition, we ask for comment on the legal basis for the Commission to provide or deny recovery for originating access.[16]

Commenters opposing the Petition thus ignore the Commission's repeated and consistent description of its own actions: that the Commission "limit[ed] reductions at this time to terminating access rates,"[17] that originating access rates were "not reduced as part of this Order,"[18] and that the Commission could not have reduced originating rates in any event because the current record "do[es] not provide a sufficient basis for us to proceed at this time."[19] Instead, these commenters attempt to suggest that the VoIP-PSTN traffic rules stand completely apart from the rest of the *Order*, and—to quote Verizon—are somehow separate and "distinct from [the FCC's] plan for reforming intercarrier compensation for traditional traffic."[20] Nothing in the *Order* supports this reading. ***Not one*** of the Commission's repeated statements suggests that the

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16 *Order, passim* (footnotes omitted) (emphases supplied). *See also id.* at ¶ 35 (noting that the *Order* "focus[es its] initial reforms on reducing terminating switched access rates, which are the principal source of arbitrage problems today" and leaves "the appropriate transition and recovery for" originating access for the further rulemaking); *id.* ¶ 651 (noting that *Order* "begin[s] the transition to bill-and-keep with terminating switched access rates, which are the main source of arbitrage today," while the only step taken for originating access is the rate cap).

17 *Id.* at ¶ 800.

18 *Id.* at ¶ 653.

19 *Id.* at ¶ 1301.

20 Opposition of Verizon at 8.

maintenance of originating access rates applies "for traditional traffic" only, or otherwise carves out any exception for VoIP-PSTN traffic.

In fact, just the opposite is true. The *Order* explicitly describes the prospective VoIP-PSTN rules as just another "part of our transition to [the] endpoint" of overall bill-and-keep.[21] It expressly states that originating charges for VoIP-PSTN traffic—just like all other originating charges—will be "subject to the phase-down and elimination of those charges *pursuant to a transition to be specified in response to the FNPRM*" once a record is developed, not flash cut separately from, and ahead of, all other rates.[22] The new access charge rules likewise make clear that the VoIP-PSTN provisions are a component of—and must be read consonantly with—the rest of the overall transition. Rule 51.913, the "Transition for VoIP-PSTN Traffic," is but one section of Subpart J of the rules, captioned "Transitional Access Service Pricing." Rule 51.901 states that the purpose of *all* the Subpart J rules, including Rule 51.913, is to establish a unified "transition of intercarrier compensation from a calling-party's-network pays system to a default bill-and-keep methodology."[23] And as demonstrated above, that overall transition does not include immediate reductions of originating access rates for PSTN-originated calls because the Commission has conceded that the current record is inadequate to support such reductions.

Commenters' efforts to find an originating-access flash cut in the *Order* where none exists are unavailing. It is true that the *Order* defines the term "VoIP-PSTN traffic" to cover traffic exchanged over PSTN facilities that both "originates and/or terminates in IP format";[24] however, this term simply defines a class of *traffic*. It does not, and is not intended to, define the type of *access service* to which the *Order*'s transitional compensation rates apply. The *Order* simply states that for the limited class of access services that it addresses with rate reductions—

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21 *Order* at ¶ 933.
22 *Id.* at ¶ 961, n.1976.
23 47 C.F.R. § 51.901.
24 *Order* at ¶ 940.

terminating access—the interstate terminating access rates apply regardless of whether the IP facilities are on the caller's side or the recipient's (so terminating rates for *both* PSTN-to-VoIP calls *and* VoIP-to-PSTN calls are set at interstate levels). The definition of the traffic at issue does not expand the type of service subject to rate reductions.

Nor does paragraph 961 of the *Order*—the only paragraph of the VoIP-PSTN discussion that even mentions originating access—impliedly overturn the Commission's explicit decision to hold off on reducing originating access charges until it can develop the necessary record and a comprehensive transition plan. First, the statement that "toll VoIP-PSTN traffic will be subject to charges not more than originating and terminating interstate access rates" simply acknowledges that, in the near term, VoIP-PSTN traffic will be subject to two separate types of access rates, originating access rates on the one hand (whether interstate or intrastate), and terminating interstate access rates on the other. If that sentence were really meant to require interstate rates for all originating access, it certainly would have been written differently: It would have stated that VoIP-PSTN traffic will be subject to charges not more than "interstate access rates," with no delineation between charges for "originating" and "terminating interstate" access.[25] Second, footnote 1976, which elaborates on the Commission's approach toward originating rates, expressly acknowledges that originating access rates for toll VoIP-PSTN traffic, like all other forms of traffic in the interim, are "subject to the phase-down and elimination of those charges pursuant to a transition to be specified in response to the FNPRM"[26]—in other words, the same future transition as all other originating access charges. Rather than pre-empting that overall transition plan for just one category of traffic, paragraph 961 merely reaffirms the Commission's intent that tariffs in the near term will include *separate and distinct* originating and terminating access rates for VoIP-PSTN traffic (as is the case for

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25 *Id.* at ¶ 961.

26 *Id.* at ¶ 961, n.1976

other forms of traffic), and that ultimately the Commission will synchronize originating and terminating rates as part of its overall reform regime.

Finally, these commenters ignore the source of the rules in question. As explained in the Petition, the Commission explicitly adopted the definition of "VoIP-PSTN traffic" that was proposed in the ABC Plan,[27] and stated that it intended to "adopt the approach" of the ABC Plan "for including such traffic within the scope of the intercarrier compensation framework for VoIP."[28] The ABC Plan *did not* call for reductions in originating access, as the Commission recognized,[29] and as its proponents (including AT&T and Verizon) explained:

> The Plan proposes to cap interstate and intrastate originating access rates at current levels. . . . The ABC Plan does not call for reductions in originating access charges, and the Commission should not undermine support for the Plan by altering this aspect of the carefully-negotiated compromise.[30]

The ABC Plan proponents also agreed that the size of the proposed recovery fund was contingent on preserving originating access rates, and that "if the Commission *does* mandate such reductions, it will need to address rate rebalancing through potential end-user rate increases and additional recovery from the transitional access replacement mechanism."[31] The oppositions filed by Verizon and AT&T do not dispute this need now. In fact, AT&T expressly agrees with Frontier and Windstream that if originating access rates for PSTN-to-VoIP calls are flash cut to

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27 *Id.* at ¶ 940. *See also id.* at ¶ 940, n. 1892 (citing ABC Plan, Attach. 1 at 10).

28 *Id.* at ¶ 941. *See also id.* ¶ 948.

29 *See id.* at ¶ 817 & n.1543 (citing ABC Plan as example of a proposal "urg[ing] that originating access charges be retained, at least on an interim basis").

30 Joint Comments of AT&T, CenturyLink, Fairpoint, Frontier, Verizon, and Windstream, Docket Nos. 10-90, et al., at 22 (Aug. 24, 2011) (footnotes omitted). *See also id.* at 26-27 (noting that "[t]he ABC Plan does not call for reductions in originating access charges"); *id.* at 26, n.85 (expressly finding that "[o]riginating intrastate dedicated transport rates are the only exception…" to the ABC Plan signatories' position that reductions to originating access rates should be avoided at this time).

31 *Id.* at 26-27. *See also id.* at 22 ("[A]ny further reforms of those rates would likely make it more difficult to keep the access replacement fund at a manageable size.").

interstate levels, the access recovery mechanism must be expanded to account for these new revenue losses that were not anticipated in the ABC Plan.[32]

In short, the commenters opposing the Petition ask the Commission to read the *Order* in a way that would render it arbitrary and capricious. They ask the Commission to adopt a contorted reading of a few phrases in one section to manufacture a significant carve-out to the approach that the Commission repeatedly affirms throughout the *Order*—that intrastate originating access rates will be capped but not reduced pending the further rulemaking—and upon which the whole orderly transition to a new intercarrier compensation regime hinges.[33] They ask the Commission to create a flash cut for originating access charges for which the Commission *concedes* it does not yet have a supporting record and has not yet articulated a legal rationale.[34] The Commission should clarify that it intended no such thing.

B. Maintaining Intrastate Originating Access Rates for PSTN-to-VoIP Calls Best Advances the Commission's Stated Policy Goals.

1. Providing a "managed transition" and enabling more broadband investment.

The *Order* states repeatedly that it contains a carefully balanced transition schedule designed to avoid flash-cut reductions in intercarrier compensation that would destabilize carriers and undermine their ability to invest in broadband and IP infrastructure. The Commission describes

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32 Comments of AT&T at 39.

33 *See, e.g., Talk America, Inc. v. Michigan Bell Tel. Co.*, 131 S.Ct. 2254, 2261 (holding that Commission will not receive judicial deference where its order is "inconsistent with [its] regulation") (2011); *American Tel. & Tel. Co. v. FCC,* 836 F.2d 1386, 1390-1391 (D.C. Cir. 1988) ("[T]he Commission's own understanding of its rate of return prescription and of its refund rule constitutes a self-contradiction . . . [and as such] we find that the refund rule as a whole is unreasonable agency action.").

34 *See, e.g., Comcast Corp. v. FCC*, 579 F.3d 1, 3, 7 (D.C. Cir. 2009) (vacating rule for failure to consider facts and lack of record support); *Bechtel v. FCC*, 10 F.3d 875, 878, 880-881 (D.C. Cir. 1993) (finding rule arbitrary and capricious for lack of supporting evidence); *Meredith Corp. v. FCC*, 809 F.2d 863, 873-874 (D.C. Cir. 1987) (finding Commission action arbitrary and capricious in part because the agency conceded that the factual basis and rationale for the rule did not exist).

the delicate balance of its transition plan—which includes maintaining originating access rates (at capped levels) pending the further rulemaking—as follows:

> We believe that these transition periods strike the right balance between our commitment to avoid flash cuts and enabling carriers sufficient time to adjust to marketplace changes and technological advancements, while furthering our overall goal of promoting a migration to modern IP networks. We find that consumers will benefit from this regulatory transition, which enables their providers to adapt to the changing regulatory and technical landscape and will enable a faster and more efficient introduction of next-generation services.[35]

The Commission notes that "a flash-cut for price-cap LECs" is "inconsistent with our commitment to a gradual transition and could threaten their ability to invest in extending broadband networks."[36] Importantly, the VoIP-PSTN rules are a key part of the *Order*'s overall balancing act: The VoIP-PSTN framework "balances the competing policy goals during the transition to the final intercarrier compensation regime," remaining "mindful of the need for a measured transition for carriers that receive substantial revenues from intercarrier compensation."[37]

Preserving originating access rates for *all* PSTN-originated calls until the Commission adopts a careful and well-supported transition plan is essential to ensuring that local exchange carriers have revenues they need to transition to an all-broadband network. As the ABC Plan demonstrates, carriers have been able to anticipate and plan for reductions in *terminating* access rates, but that plan did not forecast reductions in originating access for a significant class of traffic. Granting the Petition is necessary to ensure carriers' ability to invest in IP facilities.

2. Preserving regulatory symmetry and avoiding arbitrage. Clarifying the *Order* as requested by the Petition also is consistent with the Commission's stated preference for symmetry in terminating access. Although several commenters try to suggest the *Order* adopted

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35 *Order* at ¶ 802.
36 *Id.* at ¶ 890.
37 *Id.* ¶ 935.

a requirement of symmetry in originating and terminating access rates for VoIP-PSTN traffic,[38] it did no such thing. Rather, the *Order* only required that *terminating access* rates be the same for all VoIP-PSTN calls:

> We . . . find it appropriate to adopt a symmetrical framework for VoIP-PSTN traffic, ***under which providers that benefit from lower VoIP-PSTN rates when their end-user customers' traffic is terminated to other providers' end-user customers also are restricted to charging the lower VoIP-PSTN rates when other providers' traffic is terminated to their end-user customers.*** We thus decline to adopt an asymmetric approach that would apply VoIP-specific rates for only IP-originated or IP-terminated traffic, as some commenters propose.[39]

Granting the Petition is consistent with this requirement. Terminating access rates for VoIP-PSTN traffic would remain identical regardless of whether a call is TDM- or IP-originated, or whether it is TDM- or-IP terminated.

To be sure, originating access rates would not always equal terminating access rates for VoIP-PSTN traffic, but the *Order* does not insist on symmetry between originating and terminating rates at this juncture. Indeed, the *Order* intentionally *creates* asymmetry between originating and terminating rates for TDM calls, preserving the former (subject to a cap) and reducing the latter to bill and keep. Even the commenters claiming the *Order* required absolute symmetry in all rates do not protest the intentional disparities created here.

In addition, Verizon's (and similar commenters') position would create problematic technological asymmetries and open new avenues for arbitrage: Intrastate TDM-to-TDM calls would be subject to intrastate originating access rates, while intrastate TDM-to-IP calls would be limited to interstate originating access rates.[40] As Windstream and Frontier demonstrated, and as others agree, this regime would provide irresistible incentives for IXCs to misidentify the

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38 *See, e.g.*, Comments of Comcast Corp. at 8-9.

39 *Order* at ¶ 942 (emphasis added).

40 NCTA asserts that the Frontier and Windstream Petition urges a different form of asymmetry, whereby a "carrier could assess originating access charges only at interstate rates" if a VoIP-PSTN call originates in IP. Comments of NCTA at 14. But in fact, the Petition does not adopt a position on appropriate originating access charges for IP-originated traffic.

technology the terminating LECs use to terminate their calls—something that the originating LEC has no ability to verify. This is exactly the informational asymmetry that led to the rampant arbitrage concerning *terminating* access that VoIP-PSTN rules sought to stamp out.[41] Moreover, this asymmetry and arbitrage opportunity would persist for an *indefinite* period of time until the Commission completes its further rulemaking. Windstream and Frontier agree with the Commission that its rules must "guard against new forms of arbitrage."[42] The way to achieve that goal is to grant the Petition; denying it would simply import arbitrage problems that have plagued terminating access into an area that has been free from problems in the past.

II. THE COMMISSION SHOULD IMPLEMENT CAF PHASE I IN A MANNER THAT WILL ENSURE FUNDING IS SUFFICIENT AND APPROPRIATELY ALLOCATED AMONG CARRIERS SERVING HIGH-COST AREAS.

The Commission should act promptly to adopt the Petition's recommended approach for CAF Phase I funding. Multiple parties agree that the $775-per-unserved-location standard needs to be revised. USTelecom argues that that this "requirement is based on an unrealistic assessment . . . and likely will deter carriers from . . . deploying broadband to unserved areas in any meaningful manner."[43] Likewise, CenturyLink observes that the "goal of deploying broadband to unserved areas as rapidly as possible will not be served if the Commission retains the requirement," and concludes that the Petition provides a "sensible method for calculating deployment obligations in a manner that is attuned to individual companies' circumstances."[44]

Those opposing a revision of the $775 standard claim that the Petition's requested

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41 *See, e.g., id.* at ¶ 941.

42 *Id.*

43 USTelecom Petition for Reconsideration at 3.

44 Opposition of CenturyLink at 13-14, 16. *See also* Opposition of ACS at 6 (stating that relying on nationwide average costs will mean that "the amount of support generated under CAF Phase I for many Alaska wire centers will be insufficient even for one-time build-out expenses").

reforms would result in "unwarranted increases" in support or "raise the price tag" of reform.[45] These concerns are not substantiated by the facts. While the Petition offers a detailed analysis of assumptions regarding deployment costs, no party opposing the Petition specifically responds to this analysis, or puts forth evidence in support of alternate funding levels. Opposing parties—which have little or no experience in deploying broadband in high-cost areas—effectively ask the Commission to "take their word for it" that more funding per location is not needed. Moreover, opponents of the Petition fail to acknowledge that incremental CAF Phase I support is capped at $300 million—a cap that the Petition does not challenge. Reforms requested in the Petition, therefore, will not increase the total price tag of reform. Instead, the requested changes merely will ensure that per-location funding is sufficient to offset the costs to serve carriers' truly high-cost unserved locations, and that carriers willing to invest the most in rural broadband deployment will be able to participate meaningfully in CAF Phase I.

Limited opposition to the Petition's proposed clarifications regarding allocation of CAF Phase I support is similarly unpersuasive. Reversing course from its prior advocacy with the ABC Plan Coalition, CenturyLink offers two policy rationales for its new approach toward determining company funding levels. First, CenturyLink asserts that the proposal advanced by the Petition would require a hold harmless calculation "involving substantial complexity."[46] This claim is a gross exaggeration. In reality, the hold harmless calculation involves nothing more than removing any carrier whose total CAF Phase I funding would be less than its 2011 support and then distributing support among the remaining carriers. Second, CenturyLink contends that its proposed allocation method "will most efficiently promote broadband

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[45] Comments of Comcast at 4; Comments of NCTA at 6. *See also* T-Mobile Opposition at 8 (including the Frontier and Windstream Petition in a list of Petitions that it claims would "result in an increase in the total annual level of CAF support or CAF recovery support received by all incumbent LECs in the aggregate").

[46] Opposition of CenturyLink at 12.

deployment," because "providers with the highest cost wire centers are the most likely to need universal service support to deploy broadband in their service areas."[47] This assessment seems to presume that wireline broadband funding will flow to all of the very highest-cost areas. But that is not the case: The *Order* establishes that very high-cost areas will be addressed with Remote Area Fund support for satellite service, not CAF Phase II support for terrestrial fixed service.[48] Thus, CenturyLink's approach—which would allocate funds based on carriers' service of only the top 0.5 percent most costly locations, rather than a broader sampling of high-cost areas—would allocate support in large part based on deployment costs that the carriers themselves never will be asked to address. Far from efficient, this approach is irrational, and should be rejected in favor of the framework previously recommended the ABC Plan Coalition.[49]

III. CONCLUSION

For the foregoing reasons, the Commission should grant the Petition.

Respectfully submitted,

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47 *Id.* at 12-13.

48 *See Order* at ¶¶ 533-38.

49 *See* Letter from Cathy Carpino, General Attorney, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 (filed Oct. 21, 2011) (describing joint advocacy of AT&T, CenturyLink, FairPoint, Frontier, Verizon, and Windstream) (urging the Commission to assess a significantly larger group of high-cost wire centers when determining how to allocate CAF Phase I funding among carriers).